IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.06.2004

Coram

The Honourable Mr. B. SUBHASHAN REDDY, Chief Justice
and
The Honourable Mr. Justice K. GNANAPRAKASAM

W.P. No.2775 of 1999
and W.P.Nos., 2776 and 2894 of 1999 and 19307, 21077
to 21081, 21275, 21719, 22163 and 21516 of 2003
and
W.P.M.P. No.3965, 4114 of 1999, 24116, 26190 to
26199, 26426, 26679, 26936 and 27442 of 2003

W.P. No.2775 of 1999

V. Vijaya Raghavalu ... Petitioner

-Vs-

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
MA & WS Department,
Fort St. George, CHENNAI - 600 009.

2. The Commissioner,
Corporation of Madras,
CHENNAI - 600 003. ... Respondents

Petition under Article 226 of Constitution of India praying for the issuance of Writ of Declaration for the reasons stated therein.

W.P. No.2776 of 1999

V. Vijaya Raghavalu ... Petitioner

Vs.

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
MA & WS Department,
Fort St. George, CHENNAI - 600 009.

2. The Commissioner,
Corporation of Madras,
CHENNAI - 600 003. ... Respondents

Petition under Article 226 of Constitution of India praying for the issuance of Writ of Mandamus for the reasons stated therein.

W.P. No.2894 of 1999

P.S.S. Dhanuskodi ... Petitioner

Vs.

1. The Govt. of Tamil Nadu,
rep. by its Secretary to Government,
MA & WS Department,
Fort St. George, CHENNAI - 600 009.

2. The Commissioner,
Corporation of Madras,
CHENNAI - 600 003. ... Respondents

Petition under Article 226 of Constitution of India praying for the issuance of Writ of Mandamus for the reasons stated therein.

W.P. No.19307 of 2003

V. Gopikrishnan ... Petitioner

Vs.

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
MA & WS Department,
Fort St. George, CHENNAI - 600 009.

2. The Commissioner,
Corporation of Madras,
CHENNAI - 600 003.

3. The Asst. Health Officer,
Zone III, Corporation of Chennai,
CHENNAI. ... Respondents

Petition under Article 226 of Constitution of India praying for the issuance of Writ of Mandamus for the reasons stated therein
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W.P. Nos.21077 to 21081 of 2003

South Madras Milk Producers
Welfare Association, rep. by the
Deputy Secretary K. Elumalai,
Chennai - 600 017. ... Petitioner in W.P.

No.21077/03

Chennai Dist. Milk Vendors ... Petitioner in W.P.
Association No.21078/03

N. Mannar ... Petitioner in W.P.
No.21079/03

P. Kumar ... Petitioner in W.P.
No.21080/03

M. Madan Babu ... Petitioner in W.P.
No.21081/03

Vs.

1. The Govt. of Tamil Nadu,
rep. by its Secretary to Government,
MA & WS Department,
Fort St. George, CHENNAI - 600 009.

2. The Commissioner,
Corporation of Madras,
CHENNAI - 600 003.

3. The Health Officer,
Corporation of Chennai, ... Respondents 1 to 3
Ripon Building, Chennai-3. in all petitions.

4. The Asst. Health Officer,
Zone III, Corporation of Chennai, ... 4th Respondent in
CHENNAI. WP 21077/03

The Asst. Health Officer,
Zone , Corporation of Chennai, ... 4th Respondent in
CHENNAI. WP 21078/03

The Asst. Health Officer,
Zone (Triplicane), Corporation of Chennai,... 4th Respondent in
CHENNAI. WP 21079 & 21081
of 2003.

The Asst. Health Officer,
Zone T.Nagar, Corporation of Chennai, ...4th Respondent in
CHENNAI. WP 21080/03

Petitions under Article 226 of Constitution of India for the issuance
of Writs of Mandamus for the reasons stated therein.

W.P. No.21275 of 2003

P. Savithri Padmanabhan,
Proprietrix,
P.M. Enterprises ... Petitioner

Vs.
1. The State of Tamil Nadu,
rep. by its Secretary to Government,
MA & WS Department,
Fort St. George, CHENNAI - 600 009.

2. The Commissioner,
Corporation of Madras,
CHENNAI - 600 003.

3. The Asst. Health Officer,
Zone X, Corporation of Chennai,
CHENNAI. ... Respondents

Petition under Article 226 of Constitution of India praying for the issuance of Writ of Declaration for the reasons stated therein.

W.P. No.21719 of 2003

V. Somasundaram ... Petitioner

Vs.

1. The Govt. of Tamil Nadu,
rep. by its Secretary to Government,
MA & WS Department,
Fort St. George, CHENNAI - 600 009.

2. The Commissioner,
Corporation of Madras,
CHENNAI - 600 003. ... Respondents

Petition under Article 226 of Constitution of India praying for the issuance of Writ of Certiorari for the reasons stated therein.

W.P. No.22163 of 2003

K.S. Hemanth Kumar ... Petitioner

Vs.

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
MA & WS Department,
Fort St. George, CHENNAI - 600 009.

2. The Commissioner,

Corporation of Madras,
CHENNAI - 600 003.

3. The Asst. Health Officer,
Division 143, Zone 10,
Mylapore,
CHENNAI. ... Respondents

Petition under Article 226 of Constitution of India praying for the issuance of Writ of Declaration for the reasons stated therein

W.P. No.21516 of 2003

Chennai Mavatta Mattuvandi
Thozhilalargal Sangam,
Rep. by its Secretary ... Petitioner

Vs.

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
MA & WS Department,
Fort St. George, CHENNAI - 600 009.

2. The Commissioner,
Corporation of Madras,
CHENNAI - 600 003. ... Respondents

Petition under Article 226 of Constitution of India praying for the issuance of Writ of Declaration for the reasons stated therein.

For Petitioner in W.P. No.19307 : Mr. K.M. Vijayan, S.C. for
of 2003 M/s.La Law.

For Petitioner in W.P. No.2775 & : Mr. S. Sampath Kumar
2776 of 1999

For Petitioners in W.P. Nos.2894 of : Prof. S. Krishnaswamy
1999 and 21077 to 21081 of 2003

For Petitioner in W.P. No.21719 of : Mr. M. Vaidyanathan
2003

For Petitioner in W.P. No.21275 of : Mr. T. Doraiswamy
2003

For Petitioner in W.P. No.21516 of : Mr. S. Ayyathurai
2003

For Petitioner in W.P. No.22163 of : Mr. D. Saikumar

2003

For Petitioners in Impleading Petitions: Mr. T.V. Ramanujam, SC
in W.P. No.21275 of 2003 for M/s.T.V. Krishnamachari

For Respondents : Mr. R. Muthumumaraswamy,
Addl. Advocate General,

assisted by
Mr. V. Raghupathy,
Govt. Pleader,

Mrs. P. Bhagyalakshmi,
Standing Counsel for
Corporation of Chennai,

Mr. P.D. Audikesavalu and

Mr. E. Manoharan

:O R D E R

THE HON'BLE THE CHIEF JUSTICE

The constitutionality of Tamil Nadu Animals & Birds in Urban Areas (Control & Regulation) Act, 1997 (Act 46 of 1997), hereinafter referred to as the Act, and the consequential notifications issued thereunder are in challenge in this batch of writ petitions.

2. Before coming into force of the Act, the keeping of animals and birds was being regulated by issuance of licences under Sections 282 and 283 of the Chennai City Municipal Corporation Act, hereinafter referred to as the CCMC Act. In fact, no such strict regulation was being enforced and it can be taken that the Chennai Corporation has never bestowed any attention or deemed it serious about the requirement of licences for keeping the animals or birds, as the case may be. While the Municipal Corporations Act is a general enactment, the Act in question is a special one relating to animals and birds in urban areas and it prevails over the Acts under which the local authorities function.

3. Even though arguments have been advanced that the licences have to be issued only under the CCMC Act, there is no force in this contention, as, so long as the provisions of the Act operate, no conflicting provisions in the CCMC Act can prevail.

4. We shall now proceed to consider the contentions touching upon the constitutionality of the Act and the notifications issued thereunder.

5. So far as the legislative competence is concerned, no argument

has been raised and there is no scope for raising the arguments. Arguments have been advanced touching upon the abdication of essential legislative functions and fundamental rights of equality and arbitrariness (Art.14), right to carry on trade or profession (Art.19 (1) (g) and right to life (Art.21).

6. Mr. K.M.Vijayan, learned Senior Counsel, led the arguments for the petitioners followed by Mr. S. Sampath Kumar, the learned senior counsel and Mr.Ayyathurai and Prof.S.Krishnaswamy, learned counsel and other learned counsel. The learned counsel for the petitioners submitted that the Act is hit by excessive delegation of legislative functions and violation of fundamental rights guaranteed under Articles 14 , 19(1)(g) and 21 as also of Article 48 of Indian Constitution. They also raised an argument that Section 8 of the Act is inconsistent with Section 4 of the Act and on that count, Section 8 of the Act is liable to be struck down. Alternative argument is that in the face of Section 4 of the Act, Section 8 is not necessary and in fact, it is superfluous.

7. The contentions raised on behalf of the learned counsel for the petitioners have been countered by Mr.R.Muthukumaraswamy, Additional Advocate General, appearing for the State. He submitted that the prohibition is imposed by issuance of notifications in the larger public interest, that there is nexus for the object to be achieved, that as the prohibited animals were the cause for the environmental degradation, the notification was issued prohibiting the keeping of the animals in specified Divisions of the Chennai Corporation, that even if a small section of owners of animals and birds are affected, as there is a larger public interest to keep the places covered by the Divisions in which prohibition has been imposed, pollution-free, the notification is valid, that fundamental rights of the petitioners to carry on their profession or trade, cannot outweigh the greater fundamental right of the citizens, who need pollution-free environment, which is also a fundamental right under Article 21 of the Indian Constitution.

8. Either side have relied upon some judicial precedents in support of their respective contentions.
9. The contentions and rival contentions raised by either parties give rise to the following contentious issues:
(i) Whether the impugned Act suffers from delegation of essential legislative functions?

(ii) whether the impugned Act is violative of Articles 14, 19(1) (g) and Article 21 of the Indian Constitution? and

(iii) whether Section 8 of the Act is contradictory and comes into clash with Section 4 of the Act thereof requiring judicial intervention to set the said provision at naught?

10. The Act came into force on 11.8.1997 in so far as the city of Chennai is concerned. In other urban areas, it comes into effect as and when the notifications are issued, which can even be different for different urban areas. Section 2 of the Act contains definition clauses. 'Animal' means any animal specified in I Schedule and 'Bird' means any bird specified in II

Schedule. 'Licence' means a licence granted under the Act and by the Officer appointed therefor. 'Prohibited Area' means areas declared and notified under Section 8. 'Urban Area' means the limits of the city of Chennai and any area within the limits of any other Municipal Corporation or any Municipality or Town Panchayat or Industrial Township constituted under any law for the time being in force, which is declared by the Government by notification to that effect. Section 3 bars keeping of any animal or bird in any urban area after three months of the notification issued under Section 3 except by obtaining licence therefor. Licence has to be applied to the Licensing Officer in the prescribed format and paying fees. The Licensing Officer under Section 4 is empowered either to grant, renew or refuse the licence. Guidelines are provided in the sub-Sections and sub-Clauses and they will be discussed later in the judgment. Section 5 deals with penal actions for violation of licences and such penal action can be suspension or cancellation of the licence. Section 6 provides appeal remedy for orders whether refusing to grant licence or renewing the same as also suspending or cancelling the same. Section 7 makes the order of the Appellate Authority final. Section 8 contains a non-obstante clause empowering the Government to declare at any time by notification the whole or part of an urban area to be a prohibited area if it deems fit so to do in public interest. On and after the date of such declaration, no fresh licence shall be granted to keep the prohibited animals/birds and any licence issued stands cancelled. A time of six months is prescribed from the date of issuance of such notification for enforcement thereof. Section 9 empowers the Authorities specified thereunder to inspect the place where the notified animal or bird is kept or intended to be kept so as to get satisfied about the compliance of the conditions of licence and to effectuate the same. Section 10 empowers the State authorities to seize any notified animal or bird found straying or tethered in any public place in an urban area or in a prohibited area or any notified animal or bird found to be kept without a valid licence or in violation of the terms and conditions of a licence in an urban area or any notified animal or bird found to be kept in a prohibited area. After seizure, the Authority can confine such animal or bird in any pound maintained by the local authority. The conditions are enumerated for redeeming the seized animal or bird. Section 11 speaks of cognizance of offences and Section 12 penalties and Section 13 offences by Companies. Section 14 gives overriding powers to the Act over other laws. Section 15 confers powers on Magistrates to try the offences summarily. Section 16 provides protection to the Authorities for actions taken in good faith. Section 17 contains an exemption clause in so far as the educational or research purposes are concerned. Section 18 is usual dealing with the power to remove defects arising while giving effect to the provisions of the Act. Section 19 confers rule-making power. Schedule I lists animals 9 in number viz., cattle, buffaloes, goats, sheeps, pigs, rabbits and hares, horses, donkeys, mules and poneys, dogs and cats other than pets and any domesticated wild animal. Schedule II lists birds viz., poultry, turkeys, pigeons, quails and any domesticated wild bird.

11. In exercise of the powers under Section 3 of the Act, G.O.Ms.No.1 57, dated 25.08.1998 was issued notifying the animals to be cattle, buffaloes and pigs and under Section 8 of the Act prohibiting the keeping of the above animals in 144 Divisions of Chennai Corporation, out of 155 Divisions, thus

sparing only 11 Divisions i.e., 1, 2, 62, 63, 64, 65, 128, 129, 153, 154 and 155. In terms of Section 8, after the period of 6 months, the prohibition came into effect on 26.2.1999 but the same was not seriously implemented. Moreover, there had been an order of the Court because of the filing of the writ petitions. But, later on, a whip has been given to prosecute the keepers of the above animals in terms of Section 12 and because of the interim orders of this Court, the same were also kept in abeyance.

12. We now proceed to deal with the contentious issues.
(i) Whether the impugned Act suffers from delegation of essential legislative functions?

In our constitutional scheme, the Legislature is vested with enactment of laws, which have to be implemented by the Executive and the correctness or otherwise of the same has to be tested by the Judiciary. If the Executive is vested with unguided, uncontrolled and uncanalised power by any enactment, the same would be unconstitutional. For making out as to whether there is excessive delegation of legislative functions, one has to look into the enactment as a whole. If sufficient guidelines are stated in the statute, within whose parameters the Executive has to function, then the statute cannot be called unconstitutional by reason of abdication of essential legislative functions. In most of the cases, the Legislature lays down the broad guidelines, within which the Executive has to function, as while enacting a law, the Legislature may not be able to comprehend several situations cropping up in the working of the Act. Necessarily then, conferment of power of subordinate legislation, either by framing Rule or issuing a Notification by the Government, is necessary. The subject on hand falls within that category where the Legislature could not comprehend the possible situations arising out of the keeping of the cattle, buffaloes and pigs. Sufficient guidelines have been given under the Act even starting with Objects and Reasons which state that the Act was enacted to ensure maintenance of public health and sanitation and that the same was endangered due to keeping of a large number of milch cattle and other animals in urban areas and as such, it was felt expedient, in the public interest, to provide for licence and regulating or prohibiting keeping and movement of animals and birds in urban areas in the State of Tamil Nadu and for matters connected therewith or incidental thereof. Further, specific guidelines have been provided in Section 4 of the Act while examining the plea of the applicant and the factors to be considered while granting, refusing or renewing the licence. In view of these guidelines, it cannot be said that there is abdication of essential legislative functions.
This finding of ours is supported by the authoritative pronouncements of the Supreme Court firstly starting with the decision in HARISHANKAR BAGLA v. STATE OF MADHYA PRADESH (AIR 1954 SC 465) in which Clause 3 of the Cotton Textiles (Control of Movement) Order, 1948 which require the purchaser of cotton textile to take permit from the Textile Commissioner to enable him to transport, was held not to be hit by arbitrary delegation of power of textile commissioner as the policy underlying the order is to regulate the transport of cotton textiles in a manner that will ensure an even distribution of the

commodity in the Country and make it available at fair price to all and that the grant or refusal of a permit is thus to be governed by this policy and the discretion given to the Textile Commissioner is to be exercised in such a way as to effectuate the policy. The above judgment has been rendered by the Constitution Bench. The above stated legal principles were followed by a later Constitutional Bench judgment of the Supreme Court in INDER SINGH v. STATE OF RAJASTHAN (AIR 1957 SC 510), which dealt with the validity of Rajasthan (Protection of Tenants) Ordinance. To the same effect is the judgment of the Supreme Court in SRI RAM KRISHNA DALMIA v. SHRI JUSTICE S.R. TENDOLKAR (AIR 1958 SC 538), which related to the power of the Government to constitute a Commission by issuance of a notification under Commissions of Inquiry Act, 19 52. Latest are the judgments of the Supreme Court in CONSUMER ACTION GROUP v. STATE OF TAMIL NADU (AIR 2000 SC 3060) and ORISSA TEXTILE & STEEL LTD v. STATE OF ORISSA & OTHERS (2002 (2) SCC 578). In CONSUMER ACTION GROUP (supra) three judge Bench of the Supreme Court held that Section 113 of the Tamil Nadu Town and Country Planning Act did not suffer from any excessive delegation and that the preamble objects and reasons and various provisions of the Act give a clear cut policy and guidelines to the Government for exercising its power and hence it is neither unbridled nor without any guidelines. It was also held that the facts recorded in the statement of Objects and Reasons of the Amending Act indicates matter of serious concern, which requires earnest consideration to salvage in future such recurring situation affecting public right with resultant hazard of traffic, public health, security etc. In ORISSA TEXTILE & STEEL LTD (supra), a Constitution Bench of the Supreme Court held that Section 25-O as substituted by Act 46 of 1982 of Industrial Disputes Act has been enacted to give effect to the directive principles of the Constitution and must therefore be regarded in the interest of general public. While dealing with the delegation of essential legislative function, it was held that amended Section 25-O lays down restrictions and there is no vagueness or ambiguity in the said provision, and it was held that there are sufficient guidelines and as such the amendment is not hit by the delegation of essential legislative functions, and is thus not ultra vires the Constitution. Hence, we hold this point (i) against the petitioners.

13. (ii) Whether the impugned Act is violative of Articles 14, 19 (1) (g) and Article 21 of the Indian Constitution? and (iii) whether Section 8 of the Act is contradictory and comes into clash with Section 4 of the Act thereof requiring judicial intervention to set the said provision at naught?

Citizen's fundamental right to carry on with his profession/trade or business can always be regulated by imposing such reasonable restrictions as are necessary as contemplated by sub-Article (6) of Article 19 of Indian Constitution. But such restrictions in sub-Article (6) can be only reasonable restrictions and if the Court finds it unreasonable, then they are liable to be struck down as being infractive of the fundamental right guaranteed under Article 19 (1) (g) of the Constitution. While imposing reasonable restrictions, Regulations can be made and in some cases, 'Regulation' may mean 'prohibition'. Pernicious trades like liquor trade and lottery business, of

course, do not come within the protection of Article 19 (1) (g). But even other kinds of activities permitted under Article 19 (1) (g) can be prohibited if they can be brought within the limits of reasonableness. In STATE OF ORISSA AND ANOTHER VS. RADHESHYAM MEHER AND OTHERS (1995 (1) SCC 652) it was held that government policy in public interest over rides individual interests. In the said case 24 hours medical stores were to be opened in the campus of the hospitals having 30 beds and the same was questioned by some shop owners in front of the hospitals, and their plea was accepted by the High Court by giving certain directions, but was reversed by the Supreme Court on the ground that the facts and circumstances manifested overwhelming public interest and that 24 hours open medical stores within the hospital premises has direct nexus with the public interest of the patients and as such there is no scope for any judicial review of such a public policy, which was taken in public interest. In PRATAP PHARMA (PVT) LTD & ANOTHER v. UNION OF INDIA (1997) 5 SCC 87), it was held that the regulation of manufacture of drug and patenting rights are necessary and they are in the public interest to remedy the evil by legislative measures, and that power to regulate includes power to impose total prohibition if it is found necessary in the public interest. The question is whether, in the context of these cases, imposition of total prohibition of keeping of animals or birds can be said to be a reasonable restriction. Keeping of animals and birds either for business or otherwise is as old as human existence. By no stretch of imagination, can it be said to be pernicious. There are lakhs of families, who are dependant upon keeping of milch cows and she-buffaloes for the purpose of vending milk for eking out their livelihood. Lakhs of persons keep them for their domestic use. Having regard to our social background and economical situation, bullock-carts cannot be totally avoided. Necessity of keeping of animals and birds cannot be underestimated. On the other hand, traffic hazards have to be taken into consideration and the adverse effects on environment i.e. air, water and soil because of movement and keeping of the animals have also to be taken not of. Traffic safety and environmental safety are the prima factors and they weigh more in the context of greater public interest than the individual interest of the keepers of the animals. But, for that reason, there need not be total prohibition. That can be judged on case to case basis and individually whenever applications were filed for the grant of licence or at the most on Division basis and in terms of localities. Keeping in view the above factors, in some cases on individual basis or Division-wise, the licence can be refused and the licences already granted and renewal sought for can be refused. But it cannot be enbloc for 144 Divisions. Such sweeping provisions imposing blanket prohibition are quite disproportionate to the measures to be taken for safety of either traffic or environment. Unattended stray cattle are traffic hazards both for pedestrians and the vehicular traffic. Their movements need to be curtailed and such curtailment cannot be termed as unreasonable. Even the animals, which are attended by its keepers or the servants, need some restri ctions for common good and safety of the pedestrians and vehicular traffic. The movements of those animals need to be regulated. In that process, such regulation that the animals cannot be allowed to be taken through some busy localities can even be imposed. In the context of environment, restriction can be imposed regarding maintenance, washing of animals and also monitor the proper disposal of animal excreta as they affect air, water and soil. Restriction can be imposed to see that water channels or

public water sources or water supplies are not polluted on account of the keeping of the animals. In fact all these things are taken care of and so specifically in Section 4 of the Act itself. It is apt to extract Section 4 of the Act:

4 (1) Any person intending to obtain or renew a licence shall apply to the Licensing Officer in such form, in such manner and on payment of such fee, as may be prescribed.

(2) On receipt of an application under sub-Section (1), the Licensing Officer may, either grant or renew the licence or for reasons to be recorded in writing, by order, refuse to grant or renew the licence:
Provided that the Licensing Officer shall before passing an order refusing to grant or renew the licence, give the persons concerned, a reasonable opportunity of being heard.

(3) In granting or renewing or refusing to grant or renew a licence, the Licensing Officer shall have regard to the following matters, namely:-

(a) the number of notified animals or birds kept in the area for which licence has already been granted where the animals or birds are intended to be kept;

(b) the suitability of the premises and its neighbourhood in which the notified animals or birds are proposed to be kept;

(c) the suitability from the public health point of view and in particular, of the stable or shed and the arrangements in the stable or shed for supply of water for drinking, washing, cleaning, disposal of waste and other sanitary arrangements;

(d) the arrangements for proper rearing of the calves or young birds;

(e) the arrangements for maintenance of notified animal or bird during dry period; and

(f) such other matters as may be prescribed.

(4) The licence shall be in such form and be valid for such period and shall be subject to such terms and conditions as may be prescribed.

Those restrictions are quite valid and sufficient so as to strike a balance between a larger public interest of providing clean environment and also avoiding danger either to pedestrians or vehicular traffic. By vehicular traffic, we mean even bicycles and other modes of conveyance. For violations of the conditions of licence, the Authorities are sufficiently vested with powers to deal with the same by suspending or cancelling the licences, impounding the animals, levy of penalty and even to prosecute. In so far as the animal keeper is concerned, if there is a refusal to grant licence or to renew the licence already granted but expired, there is an appeal provision. We are not mentioning the provisions so as not to repeat the same as they have already been detailed above in paragraph 10. Section 4 is perfectly valid containing reasonable restrictions and answers the reasonable restriction

clause contained in sub-Article (6) of Article 19 of Indian Constitution.

14. But coming to Section 8 of the Act, it is quite different. It is not in the nature of a Regulation, but shunning the very exercise of consideration of reasonableness or otherwise of the restriction. There is an enabling provision for imposition of total prohibition for keeping of the animals and in this case, out of 155 Divisions of Chennai Corporation, only 11 Divisions are exempt from the prohibition while prohibition is clamped in 144 Divisions. Except stating that such prohibition can be imposed if the Government deems fit so to do in the public interest, no other guiding factor has been stated. Section 8 of the Act reads,

8. (1) Notwithstanding anything contained in the foregoing provisions of this Act, the Government may, at any time, declare, by notification, the whole or part of an urban area, to be a prohibited area, if it deems fit so to do in the public interest.

(2) On and after the date of such declaration, -

(a) no licence shall be granted in the prohibited area and every licence already granted and in force in the prohibited area shall stand cancelled on the expiry of six months from the said date or on the expiry of the remaining period of the licence, whichever is earlier; and the person concerned shall remove from the prohibited area all his notified animals and birds, within the said period of six months or the said remaining period, as the case may be; and

(b) no notified animal or bird shall be brought into or kept in the prohibited area;

Provided that any notified animal or bird may be -

(i) allowed to pass through the prohibited area in the course of their journey to any outside area; or

(ii) brought into the prohibited area for such other purposes as may be prescribed, in accordance with the permit granted by the Licensing Officer in such form and in such manner and subject to such conditions as may be prescribed.

(3) Notwithstanding anything contained in sub-Sections (1) and (2), the Government may, at any time, in the public interest, by notification, rescind any notification issued under sub-Section (1), in respect of the whole or any part of the area specified in that notification and may, at any time, by like notification issued under sub-section (1), redeclare that area or part thereof as a prohibited area from a date specified in such subsequent notification.

Reading and construing Section 8 of the Act, independent of other provisions of the Act, makes it vulnerable to the plea that the provision confers unbridled, uncontrolled and uncanalised power on the Government to totally prohibit on the vague ground of public interest. On this ground, the said

provision can be struck down as unconstitutional. In this context, we are of the considered view that the legal principles enunciated by the Supreme Court in HARICHAND SARDA v. MIZO DISTRICT COUNCIL (AIR 1967 SC 829), PATHUMMA v. STATE OF KERALA (AIR 19 78 SC 771) and SODAN SINGH & OTHERS v. NEW DELHI MUNICIPAL COMMITTEE & OTHERS (1989) 4 SCC 155) are squarely applicable. In HARICHAND SHA's case (supra), it was held by a three Judge Bench with a majority of 2:1, that Section 3 of the Regulation empowering the Authority to prohibit a non-tribal from carrying on trade in a notified district is an entirely unguided and untrammelled power and even without a check by the superior authority as there was no appeal provided. In PATHUMMA's case (supra) the seven Judge Constitution Bench of the Supreme Court dealt with the validity of Kerala Agriculturists Debt Relief Act as to whether it places reasonable restrictions. Following AIR 1973 SC 947 (JAGMOHAN SINGH v. STATE OF U.P) it was held that the Supreme Court need not refer on the American cases nor rely on the American Constitution for the purpose of examining the seven freedoms contained in Article 19 of the Constitution of India, because the social conditions and the habits of our people are different. It was held that in judging the reasonableness of the restrictions imposed by clause (5) of Article 19 of the Constitution of India, the Court has to bear in mind the Directive Principles of State Policy and that the restrictions must not be arbitrary or of an excessive nature so as to go beyond the requirement of the interest of the general public. In the above judgment, the decisions of AIR 1951 SC 118 (Chintaman Rao vs State of Madhya Pradesh), 1954 SC 224 (M/s. Dwarka Prasad Luxmi Narain Vs. State of Uttar Pradesh), 1957 SC 699 (The State of Bombay Vs. R.M.D. Chamarbaugwala) & 1951 SC 318 (State of Bombay Vs. F.B.Balsara) have been followed. It was also held that in order to judge the quality of the reasonableness no abstract or general pattern or a fixed principle can be laid down so as to be of universal application and the same will vary from case to case. It was further held that a just balance has to be struck between the restriction imposed and the social control envisaged by Clause (6) of Article 19 of the Constitution of India and that there must be a direct and proximate nexus or a reasonable connection between the restriction imposed and the object which is sought to be achieved. It was also held that the Court has to see whether by virtue of the restriction imposed on the right of the citizen, the object of the statute is really fulfilled or frustrated.
It was further held that the Court must see the prevailing social values whose needs are satisfied by restrictions meant to protect the social welfare. It was held in that case that the object of the Kerala Agriculturists Debt Relief Act is to eradicate the rural indebtedness and thereby secure common good of all people living in abject poverty and the object therefore clearly fulfills the directive laid down in Articles 38 and 39(b) of the Constitution. The tenor of the judgment in SODAN SINGH (supra) is also to the similar effect. It was held in that case that hawkers have a fundamental right to carry on trade on pavements of roads, but subject to reasonable restrictions under Article 19(6). It was held that hawkers are squatters and have no right to occupy any particular place on the pavement, but they are entitled to carry on their trade by hawking. However, it was held that hawking do not come within the purview of Article 21. The judgment of the Supreme Court in SAGHIR AHMAD v. STATE OF U.P. (AIR 1954 SC 728) was distinguished.

15. Keeping in view the law laid down by the Supreme Court aforesaid,

there cannot be any hesitation to strike down the clause empowering total prohibition clause contained in Section 8 of the Act on both the grounds of the abdication of essential legislative functions as also imposition of unreasonable restrictions beyond the scope of subArticle (6) of Article 19 of Indian Constitution.

16. But if a harmonious construction of Section 8 of the Act is made reading with other Sections of the Act and particularly Section 4 of the Act, even if it appears at a first blush that there is a conflict between Sections 4 and 8 of the Act, the harmonious construction can be made so as to have a proper understanding and working of the Act. In this context, an authoritative pronouncement of the Constitution Bench of the Supreme Court in NAND LAL v. STATE OF HARAYANA (AIR 19 80 SC 2097) needs a reference. The five Judge Constitution Bench of the Supreme Court has held as follows:-

"A statute enacted by a Legislature falling within its competence which did not offend any fundamental rights guaranteed by Part III of the Constitution and which did not contravene any other provision of the Constitution could not be declared ultra vires either on the ground that its provisions were vague or uncertain or ambiguous or mutually inconsistent. Unlike the American Constitution, there was no 'due process' clause in our Constitution and, therefore, Courts could not declare a statute invalid on the ground that it contained vague, uncertain, ambiguous or mutually inconsistent provisions, and that it was the duty and function of the Court, in relation to each forensic situation, to examine the language of the law, the context in which it was made, to discover the intention of the Legislature and to interpret the law to make effective and not to frustrate the legislative intent and in that behalf it could always call in aid well-known canons of interpretation and even where the provisions of a statute appeared to be mutually inconsistent there were several well-known rules of interpretation to guide the Court in giving a proper meaning to the provisions of the statute, such as, the rule of harmonious construction, the rule that special shall prevail over the general etc."

Following the aforesaid legal principles, we hold that Section 8 of the Act is not to be read and construed independently but has to be read into Section 4 of the Act and no blanket prohibition can be imposed but it can only be in individual cases or Division-wise by refusing to grant or renew the licence only in the context of what has been said by us above in paragraph 13 and keeping in view the spirit and object behind sub-Section 3 with its sub-clauses (a) to (f) and subSection (4) of Section 4 of the Act and all such orders passed either refusing to grant licence or refusing to renew the existing licence on the verge of its expiry are appealable under Section 6 thereof. We also make it clear that the restrictions which are placed on the animals notified in the instant cases have to be placed for all such animals and the birds incorporated in Schedules I and II appended to the Act.

17. All the writ petitions are disposed of accordingly. The status quo with regard to the keeping of the animals, as obtained on this day, shall be maintained for a period of two months from today and within the said time, all such persons, who want to keep the animals, which have been

prohibited under the impugned notification, shall file their applications by complying with the formalities and within two months thereof, the Authorities shall dispose of the same in view of what is stated supra. No costs. Consequently, the connected W.P.M.Ps. are closed.

sm/pv

Internet : Yes
LR Entry : Yes